IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5-2-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.34330 of 2002
W.P.M.P.No.17568 of 2006

K.Bakthavatchalam ... Petitioner

Vs.

Tamil Nadu State Transport Corporation
(Kumbakonam Division-I) Ltd.,
Kumbakonam. ... Respondent

Prayer: Writ petitions filed under Article 226 of Constitution of India, praying this Court to issue a writ of mandamus directing the respondent to reinstate the petitioner in service with all consequential benefits consequent to the order of this Court dated 9.4.2001 in W.P.No.16395 of 1993 confirming the order dated 30.4.1993 of the Industrial Tribunal rejecting the approval application No.131/89 filed by the respondent under section 33(2)(b) of the I.D. Act seeking approval for dismissal.

For Petitioner : Mr.D.Hariparanthaman
For Respondent : Mr.C.Kanagaraj

O R D E R

By consent of the learned counsel for the petitioner as well as respondent, the writ petition is taken up for final disposal.

2. Petitioner seeks a direction to the respondent to reinstate him in service with all consequential benefits consequent to the order of this Court dated 9.4.2001 in W.P.No.16395 of 1993 confirming the order dated 30.4.1993 of the Industrial Tribunal rejecting approval application No.131/89 filed by the respondent under section 33(2)(b) of the I.D. Act seeking approval for dismissal.

3. Petitioner was appointed as Conductor from 3.2.1981 with staff No.7232. He was dismissed from service by order dated 21.7.1989 on certain allegations. Since an industrial dispute relating to the bonus for the year 1981-82 was pending before the Industrial Tribunal, Madras in I.D.No.62 of 1982, respondent herein filed an application seeking approval

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of the dismissal under section 33(2)(b) of the Industrial Disputes Act, 1947. The Tribunal passed an order on 30.4.1993, rejecting the approval application. The said order rejecting approval was challenged by the respondent in W.P.No.16395 of 1993 and the said writ petition was dismissed by this Court on 9.4.2001, thereby confirmed the order of the Industrial Tribunal. After dismissal of the writ petition, petitioner issued a notice on 15.7.2001 requesting the respondent to reinstate him with all consequential benefits. Since the petitioner was not reinstated, he filed the present writ petition.

4. Even though the respondent is served, no counter affidavit is filed by the respondent.

5. The learned counsel for the petitioner submits that once the application seeking approval of dismissal of the petitioner is rejected, petitioner should be deemed to be in continuous service as held by the Honourable Supreme Court in the decision reported in (2001) 9 SCC 99 (T.N.State Transport Corporation v. Neethivilagan, Kumbakonam) and (2002) 2 SCC 244 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and others) and therefore the petitioner is entitled for reinstatement with all backwages and other benefits.

6. I have also heard the learned counsel appearing for the respondent.

7. Application No.131/89 seeking approval for dismissal of the petitioner was dismissed by the Industrial Tribunal, Madras, on 30.4.1993. The writ petition challenging the said rejection of approval filed in W.P.No.16395 of 1993 was dismissed by this Court on 9.4.2001. The said order has become final.

8. As rightly contended by the learned counsel for the petitioner, once approval sought for is refused, the order of dismissal will become invalid and inoperative in law as held by the Honourable Supreme Court in the decision reported in (2001) 9 SCC 99 (T.N.State Transport Corporation v. Neethivilagan, Kumbakonam) wherein in para 12 it is held thus,

> "12. Sub-section (2) deals with alteration in the conditions of service or the discharge or punishment by dismissal or otherwise of the workman concerned in the pending dispute but in regard to any matter not connected with such pending dispute. Though this provision also places a bar in regard to matters not connected with the pending dispute, it leaves the employer free to discharge or dismiss a workman by paying wages for one month and making an application to the authority dealing with the pending proceedings for its approval of the action taken. There is a distinction between matters connected with the industrial dispute and those unconnected with it. Thus, a balance

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between the interests of the workmen and the employer is sought to be maintained in the provisions of Section 33. The action taken under Section 33(2) will become effective only if approval is granted. If the approval is refused, the order of dismissal will be invalid and inoperative in law. In other words, the order of dismissal has to be treated as non est and the workman will be taken never to have been dismissed.

9. In the light of the above referred decision of the Honourable Supreme Court and since the facts in this case are not in dispute and that, as the order of this Court made in W.P.No.16395 of 1993 dated 9.4.2001 has become final, the respondent is bound to reinstate the petitioner with continuity of service and backwages.

10. Hence, the writ petition is allowed. The respondent is directed to reinstate the petitioner with continuity of service and backwages within a period of four weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

Tamil Nadu State Transport Corporation
(Kumbakonam Division-I) Ltd., Kumbakonam.

1 cc To Mr.D.Hariparanthaman, Advocate, SR.6875.

W.P.No.34330 of 2002

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